CHAPTER 17 EVIDENCE CUSTODY

This chapter contains an overview of the handling of, packaging of, and caring for physical evidence. The requirements for evidence custody and control are covered in OPNAVINST 5580.1, the *Navy Law Enforcement Manual*.

PHYSICAL EVIDENCE

LEARNING OBJECTIVES: Explain the importance of physical evidence, and list and define the three general categories of evidence. State the guidelines used to evaluate and identify evidence.

Physical evidence is one of your most valuable assets in pursuing an investigation to a successful conclusion. It produces leads during the investigation and aids in establishing the guilt or innocence of an accused person in a judicial or an administrative proceeding. To achieve the maximum benefit from physical evidence, not only must you be skilled in collecting it, but you must know how to handle and care for it to preserve it for the development of leads, for laboratory examination, and/or for presentation in court.

Such handling and care involves (a) storing the evidence to retain the integrity of the item in its original condition as nearly as possible, (b) maintaining a chain of custody for the item to ensure responsibility and ensure its evidentiary value, (c)proper transmittal of the item to a laboratory for analysis, if necessary, and (d) disposition of the item when it is no longer of evidentiary value.

DEFINITIONS

Evidence is anything that tends to prove or disprove a fact in issue either directly or by inference. Evidence may be physical or testimonial. This section addresses only physical evidence. Physical evidence is divided into three general categories:

Movable evidence— can be picked up at a crime scene or any other location and transported.

Fixed or immovable evidence— cannot be readily removed from a crime scene, because of its size, shape, or makeup (such as walls, telephone poles, and floors).

Fragile evidence— is physical evidence that, if special care is not taken to preserve its state, can deteriorate to a point where it is no longer of evidentiary value. It is difficult to detect. It may be movable or immovable. A shoe print in the snow is actually immovable, but a cast of it can be taken and preserved so as to be admissible as evidence. Fingerprints can be lifted, photographed, or removed, whereas body fluids can be preserved in their natural state (or closely thereto).

EVALUATION

The question invariably arises as to whether an object is or is not evidence. You resolve this question by evaluating the object, circumstances, and conditions at the scene, supporting your decision with good judgment, common sense, and past experiences.

Ask yourself, does the object provide an insight into the execution of the crime? Might it link a suspect(s) to the commission of the crime? Will it establish one or more of the criminal elements that make up the legal definition of the crime being investigated? If the object has even the slightest potential of answering these questions, then it should be processed as evidence.

Two more points need to be considered: First, if in doubt about the evidentiary value of an object, process it as evidence. Second, collected evidence may not only prove guilt, but may also prove innocence.

IDENTIFICATION

The naval security force member who first receives, discovers, or recovers physical evidence must be able to authenticate the evidence at a later date. The ability to identify an object as being the specific one collected by the security force member and to attest to its condition or characteristics relevant to the investigation is paramount.

Correct identification of evidence is accomplished when the security force member who initially takes custody of the evidence promptly marks and tags the item(s) of evidence.

Evidence should be inscribed with the initials of the collector and military date and time. Place the marking so as not to (a) destroy any latent characteristics, (b)

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EVIDE	NCE/PRO	PERTY CUSTODY	RECEIPT	15DEC923490-128-651		
	GACTIVITY		3 LOCATION NAS Bravo			
	Department	PERSON FROM WHOM RECEIVED	5. ADDRESS (Include	ZIP code)		
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OWNER	∃ John A. Do	o VN3	Patrol Squadron 21, NAS Bravo, 99999 6 WORK PHONE			
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Figure 17-1.-Evidence/Property Custody Receipt (OPNAV Form 5527/22).

reduce the function of the object, or (c) devalue it. Common sense and an understanding of how the object relates to the commission of the crime will dictate where and how to mark the evidence.

When an item of evidence cannot be marked without marring or destroying evidentiary characteristics, it is placed in a suitable container, sealed, and marked for identification. An evidence tag further serves to identify the evidence.

CHAIN OF CUSTODY

LEARNING OBJECTIVES: Define chain of custody and determine who is responsible for the safekeeping of evidence. Describe the duties of the evidence custodian and identify the forms and records used to safeguard evidence.

The chain of custody begins when an item of evidence is collected by the security force member. Evidence will no doubt be passed from person to person and even activity to activity during the course of an investigation and subsequent adjudication. The written, chronological record of transactions of this type is the chain of custody. Each person who takes physical or even constructive control over evidence must be identified as a part of the evidence chain.

RESPONSIBILITY

Each individual in the chain of custody is responsible for each item of evidence to include its care, safekeeping, and preservation while under the individual's control. When the evidence is not in use by a competent authority, such as a trial counsel, the evidence custodian assumes responsibility.

EVIDENCE CUSTODIAN

The evidence custodian must be an experienced, credible member of the security force. The custodian and an alternate are appointed in writing by the commanding officer. The evidence custodian and, in his or her absence, the alternate should be available to receive and release evidence and attend to other matters relative to the administration of the command's evidence custody system. The custodian is responsible for ensuring the creditability of the entire evidence custody system through the impeccable accountability of each item of evidence in the system.

FORMS AND RECORDS

Management of the evidence custody system is accomplished with the use of various OPNAV forms specifically developed for that purpose. Now let's consider the required forms and records.

Evidence/Property Custody Document

The OPNAV Form 5527/22, Evidence/Property Custody Document, should be used to record all custody transactions from initial collection through final disposition. A properly maintained chain of custody will ensure continuous accountability. This form is hereafter referred to as the custody document. The OPNAV Form 5527/22 is illustrated in figure 17-1.

The custody document is prepared with an original and three copies. Entries should be typed or printed in ink. The form is normally prepared by the security force member who first collects the evidence.

The last, or third, copy is used as a receipt when evidence is received from an individual. The original and other two copies, along with the evidence, are presented to the evidence custodian, who maintains the original and first copy. The second copy is returned to the submitting security force member to be attached to the Incident Complaint Report (ICR).

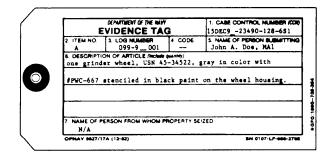
Evidence Tags

A tag must be attached to each separate item of evidence by the collecting security force member for identification and control purposes. But when a number of items are collected as a single unit of evidence, such as a toolbox filled with tools, a single tag will suffice. A detailed listing of evidence items will be entered on the custody document. The OPNAV Form 5527/17A (card) or 5527/17B (sticker) should be used for this purpose. Both types of evidence tags are shown in figure 17-2.

Evidence Log

The Department of the Navy Evidence Log, OPNAV Form 5527/24, should be maintained by the evidence custodian and should be an accurate accounting of <u>all</u> evidence entered into the system. Evidence is entered into the log chronologically. The following information should be provided in the appropriate column:

1. Log number (Julian date-year-sequential log number)



DEPARTMENT OF THE NAVY EVIDENCE TAG			1 CASE CONTROL HUMBER (CCN) 15DEC9 -23490-128-651	
Z ITEM NO	3. LOG NUMBER 099-9_001	4. CODE	S NAME OF PERSON SUBMITTING	
	ON OF ARTICLE (Include on one wheel, USN		gray in color with	
#PWC-667	stenciled in bl	ack paint	on the wheel housing.	

Figure 17-2.-Evidence Tags (OPNAV Form 5527/17A and 17B).

- 2. Date and time received by the evidence custodian
- 3. Security force member submitting the evidence
- 4. Subject title (offense) (UCMJ ARTICLE)
- 5. Evidence description (identifiable but brief)
- 6. Stowage location
- 7. Temporary transactions
- 8. Permanent disposition

An example of a properly filled out evidence log is illustrated in figure 17-3.

All entries must be legible and be made in black ink. Errors should be single-lined-through and initialed by the evidence custodian. The evidence log and all supporting documentation must be retained for 5 years from the date of last entry.

Active and Final Disposition File

Evidence custodians will maintain an active and a final disposition file. The active file will contain the first copy of each custody document that represents items of evidence pending an active investigation or administrative or judicial proceeding. The final disposition file will contain the original and first copy of custody documents that represent items that no longer have evidentiary value and for which disposition authorizations have been received.

EVIDENCE DEPOSITORIES

LEARNING OBJECTIVES: Define an evidence depository and identify the minimum standards for the physical protection of evidence. Explain combination control and list the requirements for evidence inventories. Describe the method for transfer and shipment of evidence and the steps necessary for delivery of evidence to a laboratory. Describe the conditions under which evidence may be disposed.

Any of a variety of configurations may be used to physically safeguard evidence and thus be referred to as an evidence depository or evidence locker. The needs of the command will dictate the size of the depository.

Minimum standards for the physical protection of evidence are as follows:

• The depository may be a General Services Administration (GSA) approved security container or a strong room as defined by the *Department of the Navy*

LOG NUMBER	DATE & TIME	SUBMITTED BY (NAME)	SUBJECT TITLE	EVIDENCE DESCRIPTION	STOWAGE LOCATION	TEMPORARY TRANSACTION	PERMANENT DISPOSITION
018-94-001	0900 18 Jan 94	MAI Boate	UCMJ 112A	3"x 3" Ziplock bag of white powder	Bin C-3	Sent to NSIC Lab NORVA 21 Jan 94	Destroyed on 03 Mar 94 by Lt Door MAI Water
053-95-001	1015			Word Perfect 5.1 Pro- gram disks 3.5 (5)		Check out to MAI Water For NJP on 26 Feb 95	Returned to Lt Doe Legal Officer OlMar95

Figure 17-3.-Department of the Navy Evidence Log (OPNAV Form 5527/24).

Information and Personnel Security Program Manual, OPNAVINST 5510.1.

- If a GSA container is used, it will weigh at least 800 pounds empty or be secured to the deck or bulkhead in such a manner that the container or the structure to which it is attached would have to be destroyed to remove it.
- If a strong room configuration is used, it should be equipped with shelves, storage bins, lockers, and so on, to facilitate an organized, accessible system of storage.
- Lock-bar-and-padlock-type file cabinets or cypher locks are not authorized for the protection of evidence. Locks with keys are considered less secure than combination locks and should not be used.

TEMPORARY DEPOSITORIES

In some cases, temporary storage of evidence may be necessary or practical. When the evidence custodian or alternate is not immediately available to receive the evidence from the security force member, a limited-access, secure container (such as a drop container) may be used.

COMBINATION CONTROL

Combinations to all evidence containers must be changed at least annually or whenever the evidence custodian, alternate, or security officer changes or when any suspected breach of evidence security occurs.

Under no circumstances will the combination(s) to evidence depositories be disclosed to anyone other than the custodian, alternate, or security officer.

INVENTORIES

A complete inventory of evidence and reconciliation of documents must be accomplished at least semiannually. Any suspected breach of evidence integrity is cause for an immediate inventory.

Inventories will, at the minimum, consist of a reconciliation of the evidence log against the active and final disposition evidence files and a visual accounting of each item of evidence.

Evidence inventories will be conducted by the evidence custodian, alternate, security officer, and a disinterested third party. An entry will be made in the evidence log, showing the date of the inventory and the persons present.

Relief of custodian inventories may be conducted by the evidence custodian and the relieving custodian.

TRANSFER AND SHIPMENT OF EVIDENCE

Physical evidence in the possession of the Navy will, from time to time, require transfer and shipment to another activity or agency, and the chain of custody must be maintained.

Two primary reasons for transfer and shipment are (1) when evidence is shipped to a laboratory for forensic examination and (2) when an investigation originates with one command but is refereed to another. Evidence may be transferred temporarily or permanently, hand-delivered, or transferred by registered U.S. mail.

Transfers of evidence are accomplished by the evidence custodian. Local transfers may be hand-carried. The evidence custodian should take care to ensure the evidence is received by the other activity in the same condition as when originally collected. When the evidence must be transferred to an activity geographically distant from your own, package the evidence properly (see appendix II) and transfer it by registered mail.

In either event, the original custody document(s) (OPNAV Form 5527/22) and the first copy from the active evidence file will be signed out in the Released block by the custodian. If the evidence is to be hand-carried, the receiving custodian will sign the Received block of both the original and the first copy. The original is retained by the receiving custodian and stays physically with the evidence. The first copy is retained by the releasing custodian, to be filed in the active evidence file for temporary transfers or in the final disposition file for permanent transfers.

When registered mail is used to accomplish the transfer, the original custody document(s) are signed out as for local transfer by the evidence custodian. The Received block is filled in with Registered U.S. Mail and the registered mail number. The original custody document is packaged with the evidence, and the first copy is retained in the appropriate evidence file (active/final disposition). When the return receipt is received, the evidence custodian should attach it to the first copy.

All transfer transactions, whether temporary or permanent, must be recorded in the evidence log.

When temporarily transferred evidence is returned, the other activity's evidence custodian should have receipted and released the evidence on the original custody document. The evidence custodian need only receive and return the evidence into the system, making the required notations on the evidence custody document and the evidence log.

SUBMITTING EVIDENCE TO A LABORATORY

The security force member desiring to submit evidence to a forensic laboratory should do so through the evidence custodian. The evidence custodian is responsible for the proper preparation and transmittal of evidence to the laboratory.

The Naval Criminal Investigative Service (NCIS) operates two regional forensic laboratories (NCISRFL) located in San Diego, California, and Norfolk, Virginia. These laboratories are capable of analysis of suspected drug substances, latent fingerprint identification, questioned document examination, arson debris analysis, serial number restoration, and other types of specialized trace identifications.

Evidence may be submitted to local or state forensic laboratories. The U.S. Army CID Laboratory in Georgia may also be used. Special agents from the NCISRFLs or NCIS are available to provide assistance and answer any questions that may arise.

PREPARATION AND TRANSMITTAL OF EVIDENCE

When using a local or state forensic laboratory, you must first have a memorandum of understanding that allows you to use its facility.

The following nine steps must be followed when preparing evidence for submission to a forensic laboratory:

- 1. Complete a Forensic Examination Request (OPNAV Form 5527/15) in an original and one copy. An example of a properly filled-out forensic examination request form is illustrated in figure 17-4.
- 2. Submit the original with the evidence. Maintain the copy in the investigative case file.
- 3. Each item of evidence should be wrapped or packaged separately.
- 4. Each item should be labeled to correspond with the entries on the examination request form and packed securely in a box. Documentary evidence may be placed in an envelope or a series of envelopes enclosed in another envelope.

- 5. The box or envelope must be sealed with evidence tape and initialed in such a way that removing the tape would destroy the initials.
- 6. The original forensic examination request form and the original evidence/property custody receipt must be placed in an envelope, and the envelope sealed and addressed to the laboratory to the attention of the evidence custodian.
- 7. The sealed envelope should be securely taped to the box or envelope containing the evidence.
- 8. The box containing the evidence is wrapped in heavy paper (or in the case of an envelope, enclose it in another envelope). NOTE: Multiple items of evidence may be contained in one outer container. However, items of evidence from different cases must be packaged for shipment separately to avoid cross-contamination and possible chain of custody problems.
- 9. The sender should place his or her initials or signature across the sealed flap of the inner envelope or across the paper tape used to seal the inner box and then cover the initials with transparent tape.

METHODS OF TRANSMITTAL TO A FORENSIC LABORATORY

Selecting a method of transmittal of evidence to the crime lab depends on the type of evidence and the urgency of need for the results.

There are three methods of transmittal: First-Class Mail, registered mail, freight, or hand-carry.

Chemicals, gases, ammunition, and explosive or inflammable materials may not be transmitted through the U.S. mail. These types of materials may normally be sent by freight or hand-carried as long as compliance with local, state, and federal regulations is met.

Before such items of evidence are forwarded, the lab must be notified that the shipment is planned, and specific information about the item and method of packaging must be included in the notification.

WRAPPING, PACKAGING, AND TRANSMITTING

Evidence should be packaged and wrapped to minimize friction and to prevent shifting, breaking, leaking, or contact with other evidence.

Items such as glass fragments, evidence in glass containers, impressions, casts, ammunition, bullets, cartridge cases, tablets, and capsules, which are

DEPARTMENT OF THE NAVY FORENSIC EXAMINATION REQUEST			1. CASE CONTROL NUMBER (CCN) 100CT9 -62740-123-7N2 2. PRIORITY OF EXAM Contine Contin		
3. TO (Include Atlentio	n Line)	4. FROM			
Supervisory Chemist Bldg, CEP-177 Naval Station Norfolk, VA 23511-6493 Security Depa Bldg 400 NAS Bravo 268					
	description pertaining to the requested examination de date and place of crime)	which may assist laborat	ory personnal in processing the evidence.		
BOAT, Paul Th	Room 342. Item A described to MAS Bravo. The normal hollowed out by cutting out a state of the n	ne bag and conter	nts were located in a book		
Field test co	D/OR COMPARISONS REQUESTED nducted indicating a positive results (OPNAV 5527/20) attached.	eaction for the p	presence of marijuana.		
Field test co Field Test re	nducted indicating a positive results (OPNAV 5527/20) attached.	9. VICTIM'S FULL NA			
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Field test co Field Test re 8. SUSPECT'S FULL N BOAT, Paul Th 10. TYPE OF OFFENSE POSSESSION OF 11. IS ONE COPY OF E 12. HAS OTHER EVIDE 13. INVESTIGATOR'S N MAI Floss A. 14. DISPOSITION OF E a Item Number	nducted indicating a positive results (OPNAV 5527/20) attached. NAME omas marijuana EVIDENCE CUSTODY DOCUMENT ENCLOSED? INCE PREVIOUSLY BEEN SUBMITTED FOR THIS NAME AND OFFICE PHONE NUMBER Brush - DSN: 123-4567 Commerce	9. VICTIM'S FULL NAN/A Yes CASE? No Yes (List) 21a1: (123) 456-	No Lab Report Number)		
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Field test co Field Test re 8. SUSPECT'S FULL N BOAT, Paul Th 10. TYPE OF OFFENSE POSSESSION OF 11. IS ONE COPY OF E 12. HAS OTHER EVIDE 13. INVESTIGATOR'S N MAI Floss A. 14. DISPOSITION OF E a Item Number	nducted indicating a positive results (OPNAV 5527/20) attached. NAME Omas WIDENCE CUSTODY DOCUMENT ENCLOSED? ENCE PREVIOUSLY BEEN SUBMITTED FOR THIS NAME AND OFFICE PHONE NUMBER Brush - DSN: 123-4567 Commerce EVIDENCE AFTER ANALYSIS/COMPARISON	9. VICTIM'S FULL NAN/A Yes	Lab Report Number) -4567 KAMINATION BY OTHER AS REQUESTED HEREIN.		

Figure 17-4.-Forensic Examination Request (OPNAV Form 5527/15).

particularly susceptible to breaking, marring, or other destructive changes, should be packed in cotton or soft paper.

When evidence is to be examined for fingerprints, each item of evidence should be packed in a manner that prevents damage to the fingerprints. This is accomplished by fastening the object in the container so that it will not shift and so that other objects will not come in contact with the areas of the object suspected of containing fingerprints.

The nature of the evidence will govern the use of warning notices to be affixed to the outside wrapper or box, such as Fragile, Expedite, Corrosive.

Items that contain stains, such as clothing with stains of blood or other body fluids, should not be placed in airtight plastic containers. "Sweating" and moisture accumulation may occur within such containers, contaminating the evidence. Such items must be dry before packaging. This caution also applies to fingerprint evidence.

With the exception of explosives (oils and gasoline), liquid evidence should be packed in sterile, all-glass bottles or other containers and sealed with wax or other suitable materials.

In general, small, solid items such as fibers, hairs, paint scrapings, powder, powder patterns, and threads should be placed on separate pieces of plain paper. Fold each piece of paper and pack it in a pill or powder box, paper container, or druggist fold. Seal the container with adhesive tape, wax, or other suitable material.

Documents, exemplars, standards, strings, twine, and rope should be placed in an inner cellophane envelope and an outer manila envelope. Cellophane is not suitable for packing any item that will rust or corrode.

Packages containing items of evidence such as acids, ammunition, alkalies, gasoline, glass fragments, guns, liquids, matches, medicines, chemicals, drugs, and paints, which require careful or selective handling while in transit, should be labeled Corrosive, Fragile, Keep Away From Fire, or Keep Cool, as appropriate.

Federal laws prohibit the transmission of certain types of merchandise through postal channels. If there is any question of mailing, the nearest postmaster should be consulted.

Materials bearing traces of accelerant, like those recovered in an arson investigation, should be sealed in a vaportight container, such as a Mason jar. They should

not be sent in plastic bags because accelerant will leak through plastic.

Growing plant material should not be placed in airtight plastic containers, since moisture accumulates, making examination difficult. Growing plants should either be dried before shipment or wrapped in porous paper, and the laboratory notified in advance of the shipment.

Appendix II lists items of evidence most commonly transmitted to laboratories and the methods of transmittal. If you are ever in doubt about any issue concerning evidence submissions to the laboratory, the NCISRFLs in Norfolk and San Diego have "duty examiners" available 24 hours a day. Weekends and after hours, the duty examiner may be reached by calling COMNAVBASE Norfolk or San Diego Base Police.

DISPOSITION OF EVIDENCE

The final link in the evidence custody chain is disposition. Proper final disposition of evidence is paramount to the integrity of the evidence custody system as a whole.

Any evidence that was used in a judicial proceeding normally is not disposed of until the trial and appeal process has been completed. Authorization disposal of evidence while a case is on appeal must be obtained from the cognizant staff judge advocate or the staff judge advocate of the next senior command. If the evidence was used in a federal, state, or municipal court, the authorization must be obtained from the prosecuting attorney before disposal.

When the evidence in question was used in an administrative proceeding, authorization must be obtained from the staff judge advocate or legal officer of the command that has control over the person against whom the action was taken.

Evidence that was entered into the evidence custody system but not used in a judicial or administrative proceeding nor is pending such a proceeding may be disposed of after a minimum period of 6 months with the security officer's authorization.

When requesting disposition of evidence, the authorizing command/agency may exercise any one of four options:

- Dispose of the evidence appropriately
- Return the evidence to the owner or the government agency that owns or is accountable for the property

- Transfer the evidence to the cognizant staff judge advocate, legal officer, or civil authority
- Retain the evidence in custody

Once final disposal authority has been received and annotated on the evidence custody document and in the evidence log, the chain of custody is complete, and the item should be removed from the evidence system. The original and first copy of the custody document are retained in the final disposition file. All evidence custody documentation should be retained for 5 years from the date of final disposition For more information on disposition of evidence, see the *Navy Law Enforcement Manual*.

SUMMARY

In this chapter, we explained the importance of physical evidence and listed the three general categories of evidence. Guidelines used to evaluate physical evidence were also considered. The chain of custody for evidence was covered along with the forms and records used to safeguard evidence. Next, we discussed the standards for physical protection of evidence and the methods for transfer and shipment. Finally, we outlined the steps necessary for delivery of evidence to a laboratory, and then covered the procedures for evidence disposal.